
Will Q&A

USAG Humphreys Legal Assistance Office

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WHAT IS A WILL? A will is a legal document which states your desires concerning what will happen to your property after your death. A will also contains other specific directions from you concerning who is to implement your instructions and, perhaps, who will care for any minor children you may leave behind.

WHY SHOULD I MAKE A WILL? If you die without a valid will, the distribution of your property will be governed by the laws of your domicile or state of legal residence, and perhaps by the laws of the state in which you die.

IS ALL OF MY PROPERTY CONTROLLED BY MY WILL WHEN I DIE? No! For example, proceeds of life insurance policies (including SGLI) are distributed as you have designated in the insurance policy, and property that you own jointly with another person will, normally, go to the other joint owner. Likewise, certain bank accounts which are payable on death go directly to the beneficiary. Property passed to beneficiaries in these ways avoids the probate proceeding.

WHAT IS PROBATE? Probate is a court procedure by which a will is proved to be valid or invalid. Probate proceedings also address the administration of your estate, taxes, the guardianship of children, etc.

WHAT CAN I DO WITH MY PROPERTY? You can dispose of your property any way you wish, although state law may give your spouse and/or your children a right to a portion of your property regardless of your stated intentions. Many married persons leave all their property to their spouse, and, if their spouse does not outlive them, then to their children. The provisions of your will DO NOT control life insurance proceeds, including SGLI, nor any other property that passes to beneficiaries outside of the probate proceeding.

CAN I GIVE SPECIFIC THINGS TO SPECIFIC PEOPLE? Yes, these are called specific bequests and you may make them by fully describing what you want to give and the person who is to receive it. You should be careful about specific bequests. If you dispose of the property that you describe, or if there is any doubt about the exact property that you have described in your will, you may be creating difficulties for your personal representative.

WHAT IS A PERSONAL REPRESENTATIVE? A personal representative or executor is a person that you name in your will to carry out your desires, as expressed in your will, and to settle your estate. Settlement includes paying, from your estate, any taxes and debts you may owe. Many married people name their spouse as their personal representative. Your personal representative will have an important role; choose him or her with care, and discuss the matter with him or her. Be sure that the person you name is one you trust and have confidence in.

WHAT IS A TRUST AND HOW MIGHT IT BE USED FOR THE BENEFIT OF MY CHILD(REN)? A trust is similar to a bank account that you create for the use of your children; the property you leave to your children automatically goes into the account. When your child reaches a certain age that you have decided upon in your will, all the money that remains in the account is distributed to the child. If you have more than one child, each child receives his or her share of the account when he or she reaches the required age. A "separate" trust sets up an account for each of your children. A "unitary" trust creates one account that all of your children share and none of the children will receive his or her share until the youngest reaches the required age. You appoint a "trustee" who is legally responsible for the account to watch over the account and distribute money to your children. A trustee must be selected with care. The trustee should be a person you have confidence in, someone who knows your children and understand their needs. Note: You can set up a trust for different purposes and name different beneficiaries.

ARE THERE ALTERNATIVES TO A TRUST AVAILABLE? Yes. Specifically, the Uniform Gifts to Minors Act (UGMA) or the Uniform Transfers to Minors Act (UTMA) creates custodianships which are generally recognized in state law and may be preferable to the creation of a trust in your will. If one or more of the beneficiaries in your will is a minor, the custodian you appoint establishes an UGMA/UTMA account for each minor. Like a trustee, the UGMA/UTMA custodian will be charged with administering the funds for the benefit of your children. Unlike a trustee, the custodian's duties and responsibilities are defined in state law rather than in your will.

WHAT IS A GUARDIAN? A legal guardian is the person who will act as the parent for any of your children who are minors at the time of your death. Normally, if your spouse survives you, he or she becomes the children's guardian if he or she is the biological or adoptive parent of the children. However, it is recommended that you name a guardian and an alternate guardian in the event that both you and your spouse die. If you or your spouse have children not born of your current marriage, you should discuss the situation in detail with an attorney to determine the most appropriate way to provide for the children.
